WCB – Alberta

Claim Reporting Penalty Program –

Discussion Paper

November 22, 2002

WCB Workers' Compensation Board Alberta

Introduction

Penalties are under review at the Workers Compensation Board – Alberta (WCB). With the enactment of Bill 26, the authority to levy penalties has been brought into today's economic reality. Under old legislation, the maximum fine the WCB could levy was $500 for each day or part of a day on which the contraventions occurred. With changes due to Bill 26, the maximum fine is now $25,000 for each contravention or for each day or part of a day on which the contravention occurs and continues. See Appendix A for section 152.1 of the Worker's Compensation Act (Act).

Over the last decade, our use of financial penalties has been limited. Our preferred approach is to work with employers to demonstrate business value and achieve voluntary compliance. Unfortunately, there are a group of employers who do not respond to this approach and penalties are a means to influencing more timely reporting behavior and encouraging greater accountability of employer responsibilities.

Changes in the Act make it necessary to do the following:

- Existing enforced penalties need to be reviewed to ensure their fairness and applicability under the new legislation, and
- Where penalties have not been enforced in the past or are newly defined in the Act, the WCB must consider whether and how to implement those penalties.

The authority granted by the Act must be used carefully and judiciously to impact behaviors of our stakeholders. Therefore a program to levy fines at the maximum amount will not be established immediately.

First and foremost, penalties must be directed at changing behaviors. If education fails to engage employer behaviour towards best practices, penalties can provide a direct financial consequence for failing to comply.

We will continue to work with our stakeholders – education, training and awareness of obligations under the Act. Where these efforts are unsuccessful, and compliance is an issue, penalties will be charged. The process around penalties will be transparent – all penalties will be based on factual information available to both parties. Penalties will be applied fairly – targeting employers with the poorest performance. The process will be open – employers will be able to question and appeal their penalties if they feel they are inappropriately levied.

Many penalties relate to the reporting process. Ease of reporting and convenience are important components of customer service, the reporting process must be easy to understand and simple to do. Typical reporting options available include fax, phone, in

person at the counter or mail. In 2002, a new option for annual reporting included phone reporting through Interactive Voice Response. In 2003, a new electronic reporting application will be available for employer and worker injury reporting. These enhancements streamline the reporting process, pave the way for more efficient and timely reporting and demonstrate our commitment to finding more effective and efficient ways to report.

Sharing our implementation plan for our new penalty structure and ensuring our stakeholders have the opportunity for review and feedback is important to us. This discussion paper puts forth our proposed penalty structure for claim reporting and provides opportunity for feedback.

Claim Reporting Penalty Program

Injuries and their related costs are on the rise. An analysis of lost time claims in 2001 suggests a direct correlation between prompt reporting of work-related injuries and reduced claim costs. Time loss claims reported within 3 days of layoff* had 35% lower costs than claims reported in 11-20 days (See Appendix B for detailed analysis). This supports the premise that late reporting causes delays in entitlement decisions and benefit payment as well as injury management, which can mean financial hardship and unnecessary worry for injured workers and increased costs for all employers in the system.

The WCB continues to inform employers of the benefits of early reporting of claims. Although many employers have changed their behaviour and improved reporting as a result, others have simply ignored their responsibilities. As workers compensation premiums are based on collective liability concepts, with all costs being shared by the account holders, the collection of additional monies through penalties must have a purpose. Presently, employers who comply with the Act subsidize employers who fail to comply and cause premiums to be under-collected, costs to increase and/or administrative effort to be spent unnecessarily. Penalties represent a financial consequence for adding unnecessary cost.

To address this matter, the WCB must implement a penalty program for late reporting of claims.

**Layoff is first lost time day and is typically the day after the injury*

Details of Penalty Program

Section 33(1) of the Act requires that lost time claims be reported within 72 hours (three days) of notification to employer (see Appendix A for detailed section of the Act).

The recommendation for implementing a claim reporting penalty program is a penalty based on number of days late. With this method, employers would not be penalized as long as the claim was reported within 72 hours (three days) of the date of notification. For each claim that was reported between 4 and 10 days late, the employer would be fined $100. For each claim that was reported over 10 days late, or was never reported, the employer would be fined $500. The increased penalty amount signals a more serious breach in the statutory requirement and potential greater impact on claims costs.

For this penalty program, we have determined that the employer's obligation starts on the date of notification of the worker's injury, not the date of injury. Although employers should have clear guidelines for their employees for reporting injuries, it may not always be reasonable to assume that employers are always notified on the date of injury. When the employer is notified of an injury, this is when the "number of days" count begins to establish whether penalties should be levied or not. Chronic late reporting attributed to employee reporting practices, would, however, be the subject of review, as employees should be made aware of the importance and need to report on a timely basis.

The following table illustrates how the date of employer notification, not date of worker injury, drives the penalty calculation:

Date of Worker Injury	Date of Employer Notification	Date of Employer Report to WCB	Time to Report	Proposed Penalty
1-Jan-02	1-Jan-02	3-Jan-02	0	$0
1-Jan-02	5-Jan-02	6-Jan-02	0	$0
1-Jan-02	2-Jan-02	10-Jan-02	8	$100
1-Jan-02	2-Jan-02	25-Jan-02	23	$500
1-Jan-02	2-Jan-02	No employer report received	∞	$500
1-Jan-02	Unknown*	7-Jan-02	6	$100

**Where unable to determine date of employer notification, date of employer notification will be equal to the date of worker injury*

The intent of the program is to improve and maintain injury reporting performance of all employers by promoting the benefits of early reporting, educating employers regarding reporting responsibilities and implementing a process to encourage continued compliance.

As with other decisions made at the WCB, employers will have an opportunity to request a review of any penalties levied on their accounts. They would follow the normal dispute resolution process with initial contact to a supervisor or manager followed by review at

the Assessment Review Committee. The final level of review is the Appeals Commission.

Roll-out Strategy

A multi-faceted communication strategy is planned from the outset. The primary audiences will be employers and WCB staff. General communication efforts will help employers become aware of their requirements, the financial consequences for continuing to report late and increased penalties for non-compliance. Communication to safety/trade associations, government and workers is also proposed. The primary vehicles for communication may include:

- Stakeholder workshops
- Training sessions for staff
- Information mailings to employers
- Direct communication to employers by field staff (such as Claims Auditors and Account Managers)
- WCB website and updates to publications/fact sheets
- Articles in "Insight" publication

Employers who do not report claims within legislated timelines will be identified through WCB systems data. Once identified, the applicable penalty will be calculated. The employer will be billed for late reporting penalties on their monthly statement along with other billing items. The monthly statement will detail specific information regarding each of the penalties levied, i.e. claim number, date of accident, number of days late, amount of fine, etc.

Although general communication of Act changes is already occurring, details of the claim reporting penalty program will commence in late 2002 and implementation is planned for early 2003.

Penalty Escalation

For most employers, the above penalty proposal will be effective in motivating a change in behaviour. For all employers, these fines are preventable and within their means to control. Simply reporting all claims on time would suffice to avoid penalties.

For some employers, compliance may require more of an effort. Administratively, these employers need to engage in more active management to ensure that claims are reported on time. If the culture of the organization does not encourage this, they will not comply and then be subject to steeper fines. For these employers, the fines still may not be enough to prompt a change in their approach. For example, if it will cost more to hire additional staff to ensure on time reporting, these employers may accept the fines as a

mere cost of doing business. Unfortunately, this does nothing to improve the compensation system and reduce the additional claims costs resulting from late reporting of claims.

In addition to the basic penalty program proposed, there will be a provision to allow for fine escalation in cases where employers continue to not comply. Legislation allows up to $25,000 for each contravention, which provides considerable latitude in terms of the penalty amount. Where warranted, there will be an opportunity to fine employers an amount greater than the basic program (for those who consistently report late). The intent is to effect a behavioural change in the worst performers, particularly if the basic program is not enough of a motivator to achieve this change.

To build on this, consultation with stakeholders will be undertaken to consider a more formal escalation process. The basic program will need to be revamped further to effect a change in behaviour and give the worst performers a reason to report on time. Some possible proposals are as follows:

- Raising the fine per claim over 10 days late to $1000 after a certain number of claims or a set time-period
- Use the fines as access to programs like PIR – if you have over a certain amount of fines, you forfeit eligibility in PIR

Stakeholder Feedback

Sharing our plans for the new penalty structure and ensuring our stakeholders have the opportunity for review and feedback is important to us. Information on the general administrative penalty program has already been posted on our website to initiate the process. A stakeholder session introducing the general topic of penalties was also conducted on November 6, 2002. Two additional workshops, one in Edmonton and one in Calgary, are planned for early December. The focus of the workshops will be to present the WCB model for claims reporting and gather feedback from stakeholders. Once stakeholder views have been considered, implementation of the program will commence.

Next Steps

- Collection of stakeholder feedback – December 2002
- WCB approval of penalty program – January 2003
- Communication of penalty program – First quarter 2003
- Implementation of penalty program – First quarter 2003

Appendix A – Sections of Workers' Compensation Act (Bill 26 changes effective January 1, 2003)

Section 152.1:

Administrative penalty

152.1(1) Where the Board is of the opinion that a person has contravened section 19, 33(1), 87, 103, 105, 106, 108, 109, 110, 138, 139, 140, 140.1, 145, 147(3) or 151.1, the Board may by notice in writing given to that person require that person to pay to the Board within the time specified in the notice an administrative penalty in respect of each contravention in the amount set out in the notice.

(2) A person who contravenes a provision referred to in subsection (1) is liable for the administrative penalty for each day or part of a day on which the contravention occurs and continues.

(3) An administrative penalty may not exceed $25 000
(a) for each contravention, or
(b) for each day or part of a day on which the contravention occurs and continues,
as the case may be.

(4) A notice of administrative penalty may not be issued more than 2 years after the later of
(a) the date on which the contravention to which the notice relates occurred, and
(b) the date on which evidence of the contravention first came to the notice of the Board.

Section 33(1):

Notice by employer

33(1) An employer who receives notice of an accident under section 32 or otherwise acquires knowledge of an accident or of an allegation of an accident
(a) shall forthwith record the details of the accident as required by the regulations and forthwith provide a copy of that record to the worker,
(b) shall, if the accident disables or is likely to disable the worker for more than the day of the accident,
(i) give notice of the accident to the Board within 72 hours after acquiring knowledge of the accident or the allegation, and at the same time give a copy of that notice to the worker, and
(ii) if the employer acquires knowledge that the worker has returned to work or is able to return to work, give notice of that fact to the Board within 24 hours after the employer acquires knowledge of it,

(c) shall, if the accident is one to which section 32(1)(b) applies, except in those cases where only first aid, as determined by the Board, is rendered, give notice of the accident to the Board within 72 hours after the employer acquires knowledge of the accident or the allegation, and
(d) shall provide the Board with any other information it requires in connection with the accident

(2) If an employer or a person who, in the opinion of the Board, is or might be an employer fails to
(a) provide any information as required by this section, or
(b) reply to the Board's request for information within 30 calendar days after the date of that request,
the Board may investigate the accident and may charge the costs of the investigation to the employer or other person.

Appendix B – Claims Reporting Data

January 1, 2001 to December 31, 2001

	Number of Time Loss Claims	% of Total Time Loss Claims	Lifetime TTD* Cost per Claim	TTD* Cost Increase
Employer's Report of Injury filed within 3 days	16,985	47.3%	$2,087.90	
Employer's Report of Injury filed between 4 - 10 days	8,943	24.9%	$2,136.48	2.3%
Employer's Report of Injury filed between 11 - 20 days	3,640	10.1%	$2,818.85	35.0%
Employer's Report of Injury filed beyond 20 days	3,244	9.0%	$2,756.36	32.0%
No Employer's Report of Injury Filed	3,104	8.7%	$2,556.92	22.5%
Total Time Loss Claims	35,916	100.0%		

**TTD = Total Temporary Disability*

Note: Statistical data as of April 2, 2002 and based on accepted time loss claims with DOA charged to open accounts excluding fatalities

October 1, 2001 to September 30, 2002

	Number of Time Loss Claims	% of Total Time Loss Claims
Employer's Report of Injury filed within 3 days	15,574	43.5%
Employer's Report of Injury filed between 4 and 5 days	4,132	11.5%
Employer's Report of Injury filed between 6 - 10 days	5,625	15.7%
Employer's Report of Injury filed between 11 - 20 days	3,467	9.7%
Employer's Report of Injury filed beyond 20 days	2,975	8.3%
No Employer's Report of Injury Filed	4,042	11.3%
Total Time Loss Claims	35,815	100.0%